



General Assembly

January Session, 2001

Raised Bill No. 1288

LCO No. 4048

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

***AN ACT CONCERNING COOPERATIVE HEALTH CARE
ARRANGEMENTS.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 (NEW) (a) As used in this section:

2 (1) "Cooperative arrangement" means an agreement among two or
3 more health care providers for the purpose of providing health care
4 services, which agreement may include, but need not be limited to,
5 matters concerning: (A) Fees, prices or rates, (B) sharing, allocation or
6 referral of patients, (C) personnel, (D) instructional programs, (E)
7 support services and facilities or medical, diagnostic or laboratory
8 facilities or procedures, or (F) mergers, acquisitions or joint ventures of
9 two or more health care providers, including, but not limited to,
10 physician practice groups;

11 (2) "Health care provider" means a state licensed or certified person
12 or facility that delivers any health care service;

13 (3) "Certificate of public advantage" means a certificate issued by the
14 Attorney General authorizing health care providers that are parties to

15 a cooperative arrangement to engage in conduct that could tend to
16 lessen competition in a relevant health care market upon a showing
17 that such cooperative arrangement meets the criteria set forth in
18 subdivision (2) of subsection (c) of this section; and

19 (4) "Attorney General" means the Attorney General of the state of
20 Connecticut.

21 (b) The Attorney General may issue a certificate of public advantage
22 in accordance with this section. Any two or more health care providers
23 may apply to the Attorney General for a certificate of public advantage
24 to authorize a cooperative arrangement. The application shall include
25 (1) the names of the applicants, (2) a description of the nature and
26 scope of the cooperative arrangement, (3) a description of any
27 consideration passing to any party under the agreement, and (4)
28 evidence in support of the criteria described in subdivision (2) of
29 subsection (c) of this section. Each application shall be accompanied by
30 a fee of _____ dollars. Any information of a proprietary nature
31 submitted in such application that meets the standards set forth in
32 subdivision (5), (8) or (10) of subsection (b) of section 1-210 of the
33 general statutes, shall be deemed confidential and exempt from public
34 disclosure.

35 (c) (1) The Attorney General shall review each application submitted
36 pursuant to subsection (b) of this section and shall issue a written
37 decision approving or denying the application not later than ninety
38 days after receiving the application. The decision shall set forth the
39 Attorney General's findings with regard to the benefits and
40 disadvantages set forth in subdivision (2) of this subsection and a
41 conclusion as to whether the benefits outweigh the disadvantages to
42 the people of this state. The Attorney General may conduct a hearing
43 to obtain information necessary to make such decision.

44 (2) In authorizing a cooperative arrangement under this section, the
45 Attorney General may consider the criteria set forth in subsection (a) of
46 section 19a-637 of the general statutes that the Attorney General deems

47 relevant to the application for a certificate of public advantage and any
48 benefits of such cooperative arrangement in furthering the goals of
49 health care reform including, but not limited to: (A) Enhancement of
50 the quality of health services to consumers; (B) gains in cost efficiency
51 of health services; (C) improvement in utilization of and access to
52 health services and equipment; and (D) avoidance of duplication of
53 health care resources. The Attorney General shall compare the benefits
54 of the cooperative arrangement to the disadvantages, which
55 disadvantages may include, but are not limited to: (i) The potential
56 reduction of competition; (ii) the adverse impact on quality, access or
57 price of health care services to consumers; and (iii) the availability of
58 arrangements to achieve the same benefits that are less restrictive of
59 competition.

60 (3) Cooperative arrangements authorized by the Attorney General
61 in a certificate of public advantage issued pursuant to this section shall
62 be deemed to be conduct taken pursuant to the provisions of the
63 general statutes and in furtherance of the public purposes of this state
64 and shall not be subject to the provisions of chapter 624 of the general
65 statutes, except that the Attorney General may use the powers set forth
66 in section 35-42 of the general statutes. Nothing in this section shall be
67 construed to require any health care provider to obtain a certificate of
68 public advantage in order to enter into a cooperative arrangement, and
69 absent approval of such cooperative arrangement by the Attorney
70 General, the legality of such cooperative arrangement shall be
71 determined by applicable antitrust law.

72 (4) Health care providers in a cooperative arrangement authorized
73 by this section shall submit an annual report accompanied by a fee of
74 _____ dollars to the Attorney General.

75 (5) The Attorney General shall actively supervise the cooperative
76 arrangements authorized by this section to determine whether the
77 conduct should continue to be authorized. The Attorney General shall
78 review the conduct through annual progress reports submitted by the

79 health care providers in a cooperative arrangement in accordance with
80 subdivision (4) of this subsection to evaluate whether the conduct is
81 consistent with the application and whether the benefits continue to
82 outweigh the disadvantages. If the Attorney General has reason to
83 believe that the likely benefits no longer outweigh the disadvantages,
84 the Attorney General shall notify the holder of the certificate and hold
85 a hearing to determine whether such certificate should be modified or
86 revoked. Such modification or revocation shall take effect ninety days
87 from the receipt of notice of a final decision by the Attorney General.
88 The Attorney General shall not modify or revoke a certificate of public
89 advantage more than three years after the initial issuance of such
90 certificate.

91 (d) Any person denied a certificate of public advantage by the
92 Attorney General pursuant to this section and any holder of a
93 certificate of public advantage that has been modified or revoked by
94 the Attorney General pursuant to subdivision (5) of subsection (c) of
95 this section may appeal therefrom as if such denial, modification or
96 revocation were a contested case within the meaning of chapter 54 of
97 the general statutes.

98 (e) No managed care organization, as defined in section 38a-478 of
99 the general statutes, shall refuse to negotiate in good faith with parties
100 to a cooperative arrangement authorized by the Attorney General. Any
101 managed care organization that violates this subsection shall be subject
102 to a civil penalty of not more than twenty-five thousand dollars per
103 day for each violation. The Attorney General may institute
104 proceedings to enforce the provisions of this section in the superior
105 court for the judicial district of Hartford.

106 (f) A violation of subsection (e) of this section shall be an unfair or
107 deceptive trade practice in violation of subsection (a) of section 42-110b
108 of the general statutes.

Statement of Purpose:

To allow health care providers to enter into cooperative arrangements concerning fees, prices, rates, patient referrals, instruction, personnel and other matters and to exempt such arrangements from certain state antitrust laws if the Attorney General determines that the benefits of such arrangements outweigh the adverse effect on competition.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]